

Section 110(a) Infrastructure Requirements

On January 15, 2013, the Environmental Protection Agency (EPA) revised the National Ambient Air Quality Standards (NAAQS) for particulate matter (PM_{2.5}).¹ The EPA lowered the existing standard from 15 µg/m³ to 12 µg/m³ while retaining the 24-hour PM_{2.5} level of 35 µg/m³. When the EPA revises an existing standard, states are required by Section 110(a)(1) and (2) of the Clean Air Act (CAA) to adopt and submit an "infrastructure" State Implementation Plan (SIP) to the EPA. Infrastructure SIPs demonstrate that a state has the basic program elements to implement, maintain, and enforce new or revised standards including requirements for emissions inventories, monitoring, and modeling among other elements. States are required to submit SIPs to EPA demonstrating that these basic program elements have been addressed within 3 years of the promulgation of any new or revised NAAQS.

On November 2, 2012, EPA approved Kentucky's Section 110(a)(1) and (2) infrastructure requirements for the 1997 and 2006 PM_{2.5} NAAQS.² Since that time, there have been no significant changes made to the approved SIP, which meets the requirements of Section 110(a)(2). Following EPA's guidance document, "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2) September 2013", Kentucky is submitting this letter certifying that Kentucky's existing SIP for the 2006 PM_{2.5} National Ambient Air Quality Standards (NAAQS) contains Section 110 provisions that address the requirements for purposes of implementing the 2012 PM_{2.5} NAAQS. Subsections (A) through (M) of Section 110(a)(2), set forth the elements that a state's program must contain in the SIP. The list of section 110(a)(2) NAAQS requirements and Kentucky's provisions are detailed below.

The state rules can be found on the Kentucky Legislature's website (<http://www.lrc.ky.gov>) along with the Kentucky Revised Statutes (KRS) referenced in this document. The Kentucky Revised Statutes are included as reference material and should not be adopted as part of Kentucky's SIP. This request is based upon the May 19, 2010 Federal Register published by EPA regarding California's legal authority.³ The final rule states, "We also noted that the actual statutory provisions and other legal documents relied upon to support a State's assurance of adequate legal authority need not be approved into the SIP under CAA section 110 or EPA's SIP regulations in 40 CFR part 51 (although such provisions are required to be submitted with the plan). Thus, EPA could approve, consistent with CAA and EPA requirements, and did so in this instance, a wholesale revision to the original legal authority chapter without also approving the actual statutory provisions and other legal documents cited therein."

In accordance with 40 CFR 51.102, a public hearing has been scheduled to be held at the offices of the Kentucky Division for Air Quality (Division) located at 200 Fair Oaks Lane, Frankfort, KY on December 4, 2015. The public hearing notice and the Infrastructure SIP are available to the public for review on the Division's website (www.air.ky.gov). The public hearing notice was sent to members of the community, who have provided contact information to the Division's notification distribution list. If no request for a public hearing is received, the hearing will be

¹ 78 FR 3086

² 77 FR 60307

³ 75 FR 27938

cancelled. A copy of the public hearing notice has been included as an attachment. This submittal meets the requirement for CAA Section 110(k)(1), completeness of plan submissions.

Element A–Section 110(a)(2)(A): Emission Limits and Other Control Measures

Each such plan shall –

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Chapter.

Emission limits and other control measures: Section 110(a)(2)(A) of the CAA requires SIPs to include enforceable emission limits and other control measures, means or techniques, schedules or compliance and other related matters. Kentucky Revised Statute Chapter 224.10-100(5) provides the Energy and Environment Cabinet the authority to promulgate all rules, regulations and orders promulgated under Chapter 224, and to provide for the prevention, abatement, and control of all water, land, and air pollution. The following rules address additional control measures, means, and techniques:

- 401 KAR 50:010 *Definitions for 401 KAR Chapter 50.*
- 401 KAR 50:012 *General Application.*
- 401 KAR 50:015 *Documents supported by Reference.*
- 401 KAR 50:020 *Air Quality Control Regions.*
- 401 KAR 50:025 *Classification of Counties.*
- 401 KAR 50:040 *Air Quality Models.*
- 401 KAR 50:042 *Good Engineering Practice Stack Height.*
- 401 KAR 50:045 *Performance Tests.*
- 401 KAR 50:047 *Test Procedures for Capture Efficiency.*
- 401 KAR 50:050 *Monitoring.*
- 401 KAR 50:055 *General Compliance Requirements.*
- 401 KAR 50:060 *Enforcement.*
- 401 KAR 50:065 *Conformity of General Federal Actions.*
- 401 KAR 50:066 *Conformity of Transportation Plans, Programs, and Projects.*
- 401 KAR 51:001 *Definitions for 401 KAR Chapter 51.*
- 401 KAR 51:005 *Purpose and General Provisions.*
- 401 KAR 51:010 *Attainment Status Designations.*
- 401 KAR 51:017 *Prevention of Significant Deterioration of Air Quality.*
- 401 KAR 51:052 *Review of New Sources in or Impacting Upon Nonattainment Areas.*
- 401 KAR 51:150 *NO_x Requirements for Stationary Internal Combustion Engines.*
- 401 KAR 51:160 *NO_x Requirements for Large Utility and Industrial Engines.*
- 401 KAR 51:170 *NO_x Requirements for Cement Kilns.*
- 401 KAR 51:180 *NO_x Credits for Early Reduction and Emergency.*
- 401 KAR 51:190 *Banking and Trading NO_x Allowances.*
- 401 KAR 51:195 *NO_x Opt-in Provisions.*
- 401 KAR 51:210 *CAIR NO_x Annual Trading Program.*

- 401 KAR 51:220 *CAIR NO_x Ozone Season Trading Program*.
- 401 KAR 52:001 *Definitions for 401 KAR Chapter 52*.
- 401 KAR 52:020 *Title V Permits*.
- 401 KAR 52:030 *Federally-Enforceable Permits for Nonmajor Sources*.
- 401 KAR 52:040 *State-Origin Permits*.
- 401 KAR 52:050 *Permit Application Forms*.
- 401 KAR 52:060 *Acid Rain Permits*.
- 401 KAR 52:070 *Registration of Designated Sources*.
- 401 KAR 52:090 *Prohibitory Rule for Hot Mix Asphalt Plants*.
- 401 KAR 52:100 *Public, Affected State, and US EPA Review*.
- 401 KAR 53:005 *General Provisions*.
- 401 KAR 53:010 *Ambient Air Quality Standards*.
- 401 KAR 59:001 *Definitions for 401 KAR Chapter 59*.
- 401 KAR 59:005 *General provisions*.
- 401 KAR 59:010 *New process operations*.
- 401 KAR 59:015 *New indirect heat exchangers*.
- 401 KAR 59:020 *New incinerators*.
- 401 KAR 59:021 *New municipal solid waste incinerators*.
- 401 KAR 59:023 *New medical waste incinerators*.
- 401 KAR 59:046 *Selected new petroleum refining processes and equipment*.
- 401 KAR 59:050 *New storage vessels for petroleum liquids*.
- 401 KAR 59:080 *New kraft (sulfate) pulp mills*.
- 401 KAR 59:085 *New sulfite pulp mills*.
- 401 KAR 59:090 *New ethylene producing plants*.
- 401 KAR 59:095 *New oil-effluent water separators*.
- 401 KAR 59:101 *New bulk gasoline plants*.
- 401 KAR 59:105 *New process gas streams*.
- 401 KAR 59:174 *Stage II controls at gasoline dispensing facilities*.
- 401 KAR 59:212 *New graphic arts facilities using rotogravure and flexography*.
- 401 KAR 59:214 *New factory surface coating operations of flat wood paneling*.
- 401 KAR 59:225 *New miscellaneous metal parts and products surface coating operations*.
- 401 KAR 59:230 *New synthesized pharmaceutical product manufacturing operations*.
- 401 KAR 59:240 *New perchloroethylene dry cleaning systems*.
- 401 KAR 59:260 *New blast furnace casthouses*.
- 401 KAR 59:315 *Specific new sources*.
- 401 KAR 61:001 *Definitions for 401 KAR Chapter 61*.
- 401 KAR 61:005 *General provisions*.
- 401 KAR 61:010 *Existing incinerators*.
- 401 KAR 61:011 *Existing municipal solid waste incinerators*.
- 401 KAR 61:013 *Existing medical waste incinerators*.
- 401 KAR 61:015 *Existing indirect heat exchangers*.
- 401 KAR 61:020 *Existing process operations*.
- 401 KAR 61:025 *Existing kraft (sulfate) pulp mills*.

- 401 KAR 61:030 Existing sulfuric acid plants.
- 401 KAR 61:035 Existing process gas streams.
- 401 KAR 61:036 Emission guidelines and compliance times for municipal solid waste landfills.
- 401 KAR 61:040 Existing ethylene producing plants.
- 401 KAR 61:045 Existing oil-effluent water separators.
- 401 KAR 61:050 Existing storage vessels for petroleum liquids.
- 401 KAR 61:055 Existing loading facilities at bulk gasoline terminals.
- 401 KAR 61:056 Existing bulk gasoline plants.
- 401 KAR 61:060 Existing sources using organic solvents.
- 401 KAR 61:065 Existing nitric acid plants.
- 401 KAR 61:070 Existing ferroalloy production facilities.
- 401 KAR 61:075 Steel plants and foundries using existing electric arc furnaces.
- 401 KAR 61:080 Steel plants using existing basic oxygen process furnaces.
- 401 KAR 61:085 Existing service stations.
- 401 KAR 61:090 Existing automobile and light-duty truck surface coating operations.
- 401 KAR 61:095 Existing solvent metal cleaning equipment.
- 401 KAR 61:100 Existing insulation of magnet wire operations.
- 401 KAR 61:105 Existing metal furniture surface coating operations.
- 401 KAR 61:110 Existing large appliance surface coating operations.
- 401 KAR 61:120 Existing fabric, vinyl and paper surface coating operations.
- 401 KAR 61:122 Existing graphic arts facilities using rotogravure and flexography.
- 401 KAR 61:124 Existing factory surface coating operations of flat wood paneling.
- 401 KAR 61:125 Existing can surface coating operations.
- 401 KAR 61:130 Existing coil surface coating operations.
- 401 KAR 61:132 Existing miscellaneous metal parts and products surface coating operations.
- 401 KAR 61:135 Selected existing petroleum refining processes and equipment.
- 401 KAR 61:137 Leaks from existing petroleum refinery equipment.
- 401 KAR 61:140 Existing by-product coke manufacturing plants.
- 401 KAR 61:145 Existing petroleum refineries.
- 401 KAR 61:150 Existing synthesized pharmaceutical product manufacturing operations.
- 401 KAR 61:155 Existing pneumatic rubber tire manufacturing plants.
- 401 KAR 61:160 Existing perchloroethylene dry cleaning systems.
- 401 KAR 61:165 Existing primary aluminum reduction plants.
- 401 KAR 61:170 Existing blast furnace casthouses.
- 401 KAR 61:175 Leaks from existing synthetic organic chemical and polymer manufacturing equipment.
- 401 KAR 63:005 Open burning.
- 401 KAR 63:010 Fugitive emissions.
- 40 CFR 52.940 Interstate Pollutant Transport Provisions; What are the FIP Requirements for Decreases in Emissions of Nitrogen Oxides?
- 40 CFR 52.941 Interstate Pollutant Transport Provisions; What are the FIP Requirements for Decreases in Emissions of Sulfur Dioxide?

Element B – Section 110(a)(2)(B): Ambient Air Quality Monitoring/Data System

Each such plan shall –

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to –

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator.

Ambient air quality monitoring/data system: Section 110(a)(2)(B) of the CAA requires SIPs to include provisions for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and presentation of these data available to EPA upon request. KRS 224.10-100(22) requires the installation, maintenance, and use of equipment, devices, or test and methodologies to monitor the nature and amount of any substance emitted into the ambient air and to provide the information to the cabinet. The Cabinet submitted the annual monitoring network plan, in accordance with 40 CFR 58.10, on June 30, 2015. EPA granted conditional approval of Kentucky's annual monitoring plan in a letter dated October 28, 2015.

- 401 KAR 50:050 Monitoring.
- 401 KAR 51:017 Prevention of significant Deterioration of Air Quality.
- 401 KAR 51:052 Review of New Sources in or Impacting Upon Nonattainment Areas.
- 401 KAR 53:005 General Provisions.
- 401 KAR 53:010 Ambient Air Quality Standards.

Element C – Section 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources.

Each such plan shall –

(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this Subchapter.

Program for enforcement of control measures: Section 110(a)(2)(C) of the CAA requires States to include a program that provides for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources to meet prevention of significant deterioration (PSD) and nonattainment new source review (NSR) requirements.

- 401 KAR 50:060 Enforcement.
- 401 KAR 51:001 Definitions for 401 KAR Chapter 51.
- 401 KAR 51:017 Prevention of Significant Deterioration of Air Quality.
- 401 KAR 51:052 Review of New Sources in or Impacting Upon Nonattainment Areas.
- 401 KAR 52:001 Definitions for 401 KAR Chapter 52.
- 401 KAR 52:020 Title V permits.
- 401 KAR 52:100 Public, affected state, and USEPA review.

401 KAR 51:001, 51:017, and 51:052 were amended to adopt federal revisions to the lists of major sources relating to PSD, NSR, and Title V applicability, removed the existing requirements for clean units and pollution control projects, and added nitrogen oxides as a precursor to ozone formation. These amendments became effective in Kentucky on February 5, 2010, were submitted to EPA on February 22, 2010, and were officially approved to the SIP in 75 FR 55988, on September 15, 2010.

401 KAR 51:001, 51:017, and 51:052 were amended to adopt revisions to the NSR/PSD programs consistent with the PM_{2.5} NAAQS implementation. These amendments became effective in Kentucky on December 7, 2012, were submitted to EPA on February 1, 2013, and were officially approved to the SIP in 79 FR 65143, on November 3, 2014.

Elements D(i)(I) and (II) – Section 110(a)(2)(D)(i): Interstate Pollution Transport

Each such plan shall –

(D) contain adequate provisions –

(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will –

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility.

Interstate transport: Section 110(a)(2)(D) of the CAA requires SIPs to include provisions prohibiting any source of other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state. States are required to submit Section 110(a)(2)(D)(i) plans to demonstrate compliance with these provisions.

The final Regional Haze SIP was submitted to EPA on June 25, 2008. EPA published a limited approval and limited disapproval on March 30, 2012, effective April 30, 2012. Kentucky submitted the Regional Haze 5-Year Periodic Report SIP Revision on September 17, 2014. On March 7, 2013, EPA determined that the SIP as a whole met the requirement of prong 4 of Section 110(a)(2)(D)(i)(II) in Kentucky's Section 110(a)(1) and (2) Infrastructure Requirements for the 2008 8-hour ozone NAAQS.⁴ EPA stated, "EPA is taking final action to approve the infrastructure SIP submission with respect to prong 4 because Kentucky's regional haze SIP, which EPA has given a limited approval in combination with its SIP provisions to implement CAIR adequately, prevents sources in Kentucky from interfering with measures adopted by other states to protect visibility during the first planning period."

CSAPR is a federally-enforceable program that once fully implemented may yield residual SO₂ and NO_x emissions reduction benefits. CSAPR requires states to limit their state-wide emissions of sulfur dioxide (SO₂) and nitrogen oxides (NO_x), in order to reduce or eliminate the states' contributions to fine particulate matter and ozone pollution in other states. To achieve compliance with the emissions limitations, CSAPR establishes federal implementation plans (FIPs) that require large electricity generating units (EGUs) in each affected state to participate in one or more new emissions trading programs that supersede the existing CAIR emissions trading

⁴ 78 FR 14681

programs. States can elect to revise their SIPs to modify or replace the FIPs while continuing to rely on the rule's trading programs for compliance with the emissions limitations, and establishes certain requirements and deadlines related to those optional SIP revisions. Industry and governments challenged CSAPR in the D.C. Circuit and filed motions seeking a stay of the rule pending judicial review. On December 30, 2011, the court granted a stay of the rule and ordered the EPA to continue to administer CAIR. On October 23, 2014, the D.C. Circuit lifted the stay per EPA's request and toll the CSAPR compliance dates by three years. Compliance with CSAPR's Phase 1 emissions budgets is now required in 2015 and 2016 while compliance with Phase 2 emissions budgets is required in 2017 and beyond. Kentucky's CAIR regulations were adopted into the SIP on December 3, 2007, and have continued to be implemented. Sources will be required to comply with EPA's FIP until Kentucky adopts CSAPR specific regulations into the SIP.

- 401 KAR 51:001 Definitions for 401 KAR Chapter 51.
- 401 KAR 51:010 Attainment Status Designations.
- 401 KAR 51:017 Prevention of Significant Deterioration of Air Quality.
- 401 KAR 51:052 Review of New Sources in or Impacting Upon Nonattainment.
- 401 KAR 52:100 Public, Affected State, and US EPA Review.
- 40 CFR 52.940 Interstate Pollutant Transport Provisions; What are the FIP Requirements for Decreases in Emissions of Nitrogen Oxides?
- 40 CFR 52.941 Interstate Pollutant Transport Provisions; What are the FIP Requirements for Decreases in Emissions of Sulfur Dioxide?
- Regional Haze SIP, June 25, 2008.

Element D(ii) – Section 110(a)(2)(D)(ii): Interstate Pollution and International Air Pollution

Each such plan shall –

(D) contain adequate provisions –

(ii) insuring compliance with the applicable requirements of sections 126 and 115 (relating to interstate and international pollution abatement).

Element D(ii) is satisfied when an infrastructure SIP ensures compliance with the applicable requirements of CAA Sections 126(a), 126(b) and (c), and 115.

Interstate Pollution Abatement:

Sec. 126. (a) Each applicable implementation plan shall –

(1) require each major proposed new (or modified) source –

(A) subject to part C (relating to significant deterioration of air quality) or

(B) which may significantly contribute to levels of air pollution in excess of the national ambient air quality standards in any air quality control region outside the State in which such source intends to locate (or make such modification), to provide written notice to all nearby States the air pollution levels of which may be affected by such source at least sixty days prior to the date on which commencement of construction is to be permitted by the State providing notice, and

(2) identify all major existing stationary sources which may have the impact described in paragraph (1) with respect to new or modified sources and provide notice to all nearby States of

the identity of such sources not later than three months after the date of enactment of the Clean Air Act Amendments of 1977.

- 401 KAR 51:001 Definitions for 401 KAR Chapter 51.
- 401 KAR 51:017 Prevention of Significant Deterioration of Air Quality.

Element E – Section 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies

Each such plan shall –

(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof),

(ii) requirements that the State comply with the requirements respecting State boards under section 128, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision.

Adequate resources: Section 110(a)(2)(E) of the CAA requires states to provide for adequate personnel, funding and legal authority under State law to carry out its SIP and related issues and that the state complies with the requirements under 42 U.S.C. 7428, State Boards. The following statutes address this requirement, however they are included as reference material, and should not be adopted as part of Kentucky's SIP.

- KRS 224.10-100 *Powers and Duties of the Cabinet.*
- KRS 224.10-020 *Departments Within the Cabinet – Offices and Divisions Within the Departments – Appointments.*
- KRS 224.20-050 *Fee for Administration of Air Quality Program*
- KRS 11A.020 *Public Servant Prohibited From Certain Conduct – Exemption – Disclosure of Personal or Private Interest.*
- KRS 11A.030 *Consierations in Determination to Abstain From Action on Official Decision – Advisory Opinion.*
- KRS 11A.040 *Acts Prohibited for Public Servant or Officer – Exemption.*
- 401 KAR 50:038 *Air Emissions Fee.*

Element F – Section 110(a)(2)(F): Stationary Source Monitoring and Reporting

Each such plan shall –

(F) require, as may be prescribed by the Administrator –

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Chapter, which reports shall be available at reasonable times for public inspection.

Stationary source monitoring system: Section 110(a)(2)(F) of the CAA requires States to establish a system to monitor emissions from stationary sources and to submit periodic emissions reports.

- 401 KAR 50:020 *Air Quality Control Regions.*
- 401 KAR 50:045 *Performance Tests.*
- 401 KAR 50:050 *Monitoring.*
- 401 KAR 50:055 *General Compliance Requirements.*
- 401 KAR 53:010 *Ambient Air Quality Standards.*
- 401 KAR 59:005 *General Provisions, New Source Standards.*
- 401 KAR 61:005 *General Provisions, Existing Source Standards.*

Element G – Section 110(a)(2)(G): Emergency Powers

Each such plan shall –

(G) provide for authority comparable to that in section 303 and adequate contingency plans to implement such authority.

Emergency power: Section 303 provides legal authority to the EPA to stop the emission of air pollutants that present an imminent and substantial endangerment to public health or welfare or the environment. The EPA is authorized to either bring a lawsuit in federal court or, if such civil action cannot assure prompt protection of public health or welfare, to issue such orders as may be necessary to protect public health or welfare or the environment. The requirement for states to provide adequate contingency plans (40 CFR 51.150 through 51.153) to implement such authority is intended to establish emergency episode plans for responding to elevated pollutant levels in urban areas. Emergency episode plans are required in areas that record ambient pollutant concentrations in excess of threshold levels specified in 40 CFR Part 51.150.

EPA has not promulgated regulations that provide the ambient levels to classify different priority levels. In its “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” dated September 13, 2013, the EPA recommends that states follow previous EPA guidance regarding the 2006 PM_{2.5} standard.⁵ However, the 2009 guidance addresses only the 24-hour PM_{2.5} standard, it does not address the annual PM_{2.5} standard.

On April 15, 2015, the entire state of Kentucky was designated as “unclassifiable/attainment”, with the exception of Bullitt and Jefferson Counties which were designated unclassifiable, for the

⁵ *Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 Fine Particle (PM_{2.5}) National Ambient Air Quality Standards (NAAQS).* (September 25, 2009)

2012 annual PM_{2.5} NAAQS.⁶ The following regulations provide the means to implement emergency air pollution episode measures if ever necessary.

- 401 KAR 55:005 *Significant Harm Criteria*.
- 401 KAR 55:010 *Episodic Criteria*.
- 401 KAR 55:015 *Episode Declaration*.
- 401 KAR 55:020 *Abatement strategies*.

Element H – Section 110(a)(2)(H): SIP Revisions

Each such plan shall –

(H) provide for revision of such plan –

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter.

Future SIP revisions: Section 110(a)(2)(H) of the CAA requires States to have the authority to revise their SIPs in response to changes in the NAAQS, availability of improved methods for attaining the NAAQS, or in response to the EPA finding that the SIP is substantially inadequate.

- 401 KAR 51:010 *Attainment Status Designations*.
- 401 KAR 53:005 *General Provisions*.
- 401 KAR 53:010 *Ambient Air Quality Standards*.

Element I – Section 110(a)(2)(I): Plan Revisions for Nonattainment Areas

Each such plan shall –

(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas).

It is not required that Element I be addressed in an Infrastructure SIP submission. Element I is addressed when a nonattainment SIP or an attainment demonstration is due for an area that has been designated as not attaining the standard. Nonattainment SIPs and attainment demonstrations are subject to a different submission schedule than those for Section 110 infrastructure elements and will be reviewed and acted upon through a separate process.

Element J – Section 110(a)(2)(J): Consultation with Government Officials, Public Notification, and PSD and Visibility Protection

Each such plan shall –

⁶ 80 FR 18535

(J) meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection)....

Consultation with identified officials on certain actions:

Sec. 121. In carrying out the requirements of this Act requiring applicable implementation plans to contain –

(1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of air pollution, or

(2) any measure referred to –

(A) in part D (pertaining to nonattainment requirements), or

(B) in part C (pertaining to prevention of significant deterioration), and in carrying out the requirements of section 113(d) (relating to certain enforcement orders), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal land manager having authority over Federal land to which the State plan applies, effective with respect to any such requirement which is adopted more than one year after the date of enactment of the Clean Air Act Amendments of 1977 as part of such plan. Such process shall be in accordance with regulations promulgated by the Administrator to assure adequate consultation. The Administrator shall update as necessary the original regulations required and promulgated under this section (as in effect immediately before the date of the enactment of the Clean Air Act Amendments of 1990) to ensure adequate consultation. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of the Administrator approving any portion of a plan referred to in this subsection may petition for judicial review of such action on the basis of a violation of the requirements of this section.

Consultation with government officials: Section 110(a)(2)(J) of the CAA requires States to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to CAA Section 121 relating to consultation.

- 401 KAR 50:055 *General Compliance Requirements.*
- 401 KAR 50:060 *Enforcement.*
- 401 KAR 50:065 *Conformity of General Federal Actions.*
- 401 KAR 50:066 *Conformity of Transportation Plans, Programs, and Projects.*
- 401 KAR 51:017 *Prevention of Significant Deterioration of Air Quality.*
- 401 KAR 51:052 *Review of New Sources in or Impacting Upon Nonattainment Areas.*
- 401 KAR 52:100 *Public, Affected State, and U.S. EPA Review.*

401 KAR 51:001, 51:017, and 51:052 were amended to adopt federal revisions to the lists of major sources relating to PSD, NSR, and Title V applicability, removed the existing requirements for clean units and pollution control projects, and added nitrogen oxides as a precursor to ozone formation. These amendments became effective in Kentucky on February 5, 2010, were submitted to EPA on February 22, 2010, and were officially approved to the SIP in 75 FR 55988, on September 15, 2010.

401 KAR 51:001, 51:017, and 51:052 were amended to adopt revisions to the NSR/PSD programs consistent with the PM_{2.5} NAAQS implementation. These amendments became effective in Kentucky on December 7, 2012, were submitted to EPA on February 1, 2013, and were officially approved to the SIP in 79 FR 65143, on November 3, 2014.

Public Notification:

Section 127. (a) Each State plan shall contain measures which will be effective to notify the public during any calendar [year] on a regular basis of instances or areas in which any national primary ambient air quality standard is exceeded or was exceeded during any portion of the preceding calendar year to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures which can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality. Such measures may include the posting of warning signs on interstate highway access points to metropolitan areas or television, radio, or press notices or information.

(b) The Administrator is authorized to make grants to States to assist in carrying out the requirements of subsection (a).

Public notification: Section 110(a)(2)(J) of the CAA further requires States to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measure that can be taken to prevent exceedances.

- 401 KAR 51:001 *Definitions for 401 KAR Chapter 51.*
- 401 KAR 51:010 *Attainment Status Designations.*
- 401 KAR 51:017 *Prevention of Significant Deterioration of Air Quality.*
- 401 KAR 51:052 *Review of New Sources in or Impacting Upon Nonattainment Areas.*
- 401 KAR 52:001 *Definitions for 401 KAR Chapter 52.*
- 401 KAR 52:020 *Title V Permits.*
- 401 KAR 52:030 *Federally-Enforceable Permits for Nonmajor Sources.*
- 401 KAR 52:100 *Public, Affected State, and U.S. EPA Review.*

PSD and visibility protection: Section 110(a)(2)(J) of the CAA also requires States to meet applicable requirements of Part C related to PSD and visibility protection.

The final Regional Haze SIP was submitted to US EPA on June 25, 2008. EPA published a limited approval and limited disapproval on March 30, 2012, effective April 30, 2012. Kentucky submitted the Regional Haze 5-Year Periodic Report SIP Revision on September 17, 2014. On March 7, 2013, EPA determined that the SIP as a whole met the requirement of prong 4 of section 110(a)(2)(D)(i)(II) in Kentucky's 110(a)(1) and (2) Infrastructure Requirements for the 2008 8-hour ozone NAAQS.⁷ EPA stated "EPA is taking final action to approve the infrastructure SIP submission with respect to prong 4 because Kentucky's regional haze SIP, which EPA has given a limited approval in combination with its SIP provisions to implement CAIR adequately, prevents sources in Kentucky from interfering with measures adopted by other states to protect visibility during the first planning period."

⁷ 78 FR 14681

- 401 KAR 51:005 *Purpose and General Provisions*.
- 401 KAR 51:010 *Attainment Status Designations*.
- 401 KAR 51:017 *Prevention of Significant Deterioration of Air Quality*.
- 401 KAR 51:052 *Review of New Sources in or Impacting Upon Nonattainment Areas*.
- 401 KAR 63:005 *Open Burning* establishes requirements for the control of open burning.
- 401 KAR 63:010 *Fugitive Emissions* provides for the control of fugitive emissions.
- Regional Haze SIP, June 25, 2008.

Element K – Section 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data

Each such plan shall –

(K) provide for –

- (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and*
- (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.*

Air quality modeling/data: Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to EPA can be made.

- 401 KAR 50:040 *Air Quality Models*.
- 401 KAR 50:050 *Monitoring*.
- 401 KAR 51:001 *Definitions for 401 KAR Chapter 51*.
- 401 KAR 51:010 *Attainment Status Designations*.
- 401 KAR 51:017 *Prevention of Significant Deterioration of Air Quality*.
- 401 KAR 51:052 *Review of New Sources in or Impacting Upon Nonattainment Areas*.
- 401 KAR 53:010 *Ambient Air Quality Standards*.

Element L – Section 110(a)(2)(L): Permitting Fees

Each such plan shall –

- (L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover –*
- (i) the reasonable costs of reviewing and acting upon any application for such a permit, and*
- (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter V of this chapter.*

Permitting fees: Section 110(a)(2)(L) of the CAA requires SIPs to require each major stationary source to pay permitting fees to cover the costs of reviewing, approving, implementing, and enforcing a permit.

- 401 KAR 50:038 *Air Emissions Fee*.

Element M – Section 110(a)(2)(M): Consultation and Participation by Affected Local Entities

Each such plan shall –

(M) provide for consultation and participation by local political subdivisions affected by the plan.

Consultation/participation by affected local entities: Section 110(a)(2)(M) of the CAA requires States to provide for consultation and participation in SIP development by local political subdivision affected by the SIP. KRS Chapter 77, Air Pollution Control, provides for the creation of each county to develop an air pollution control district. The Kentucky Revised Statutes are included as reference material, and should not be adopted as part of Kentucky's SIP.

Kentucky Authority:

- KRS 224.20-130, *Concurrent Jurisdiction with Local District*.
- 401 KAR 50:066 *Conformity of Transportation Plans, Programs, and Projects*.
- 401 KAR 52.100 *Public, Affected State, and US EPA Review*.